STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA CHAPMAN and STEPHEN CHAPMAN,

Plaintiffs-Appellants,

v

NATIONAL CITY BANK OF MICHIGAN/ ILLINOIS,

Defendant-Appellee.

UNPUBLISHED
March 1, 2005

No. 252586
Kalamazoo Circuit Court
LC No. 02-000480-NO

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

In this premises liability action, plaintiff appeals by right from the judgment granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff slipped and fell in defendant's parking lot on her way to work. The trial court granted defendant's motion for summary disposition, holding that the parking lot's condition was open and obvious.

On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). This Court must review the record in the same manner as must the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). When deciding a motion under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). A motion for summary disposition based on the lack of a material factual dispute must be supported by documentary evidence. MCR 2.116(G)(3)(b); *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000).

Generally, a premises owner owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, this duty does not generally include the removal of open and obvious dangers. *Id.* If the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover

them, the invitor owes no duty to protect or warn the invitee, unless he should anticipate the harm, despite knowledge of it on behalf of the invitee. *Id.*, quoting *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992).

Whether a particular danger is open and obvious depends on whether it is reasonable to expect an average user of ordinary intelligence to discover the danger upon casual inspection. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 264; 532 NW2d 882 (1995). Absent special circumstances, the hazards presented by ice and snow are open and obvious and do not impose a duty on the property owner to warn of or remove the hazard. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 4-5, 8; 649 NW2d 392 (2002) (holding that ice underneath snow on sidewalk was open and obvious where plaintiff testified that she saw the snow and knew it was slippery). The danger presented by snow-covered ice is open and obvious where the plaintiff knew of, and under the circumstances an average person with ordinary intelligence would have been able to discover, the condition and the risk it presented. *Joyce v Rubin*, 249 Mich App 231, 239; 642 NW2d 360 (2002) (holding that ice underneath snow on front steps of college dormitory was open and obvious danger).

This case is distinguishable from *Kenny v Kaatz Funeral Home, Inc*, 264 Mich App 99; 689 NW2d 737 (2004) for two reasons. First, unlike the plaintiff in *Kenny*, plaintiff knew that the weather had recently warmed. At her deposition, the following exchange took place about the weather conditions:

> *Q.* Was it snowing at the time that you left your home to travel to work on February 22nd, 2001?
>
> *A.* Lightly, yes.
>
> *Q.* Okay. If you can recall at any point prior to February 22nd, 2001, had it rained or sleeted or any kind of an ice storm or anything like that?
>
> *A.* No. I do recall the day before that it was warm because that was my first day [ ] back from my vacation.

Plaintiff was not the only witness who remembered that the weather was warmer that day. Paul Compton, who was at the parking lot dropping his wife off at work that morning, testified as follows about melting snow that day:

> *Q.* Do you know [ ] as to how that pile of ice – was it a pile of ice or snow?
>
> *A.* It was melted snow, it looked like. I mean, that was a fairly big winter. We had a lot of build up, and I remember it being piled up on that grass up there pretty good. And it was kind of coming down – it looked like it was just melting and that was the low part and that's where it flowed off and went.

Finally, Damon Ehrhardt, a maintenance technician for defendant, testified that the parking lot was a "frost color" because a sleety mixture of snow had started falling.

Plaintiff's case is also distinguishable from the plaintiff's in *Kenny, supra*, for a second reason. In *Kenny, supra* at 108, this Court noted that the fact that two other people fell in the same spot "could call into question whether the danger was indeed open and obvious to reasonably prudent persons." In this case, plaintiff presented no evidence that other people fell in the same spot at the same time.

The evidence in this case establishes that a reasonable person in plaintiff's position should have foreseen that the parking lot was slippery. Also, plaintiff testified that she was walking slowly that morning because she understood the risk of falling due to her experience with Michigan winters. Given this testimony, the parking lot's condition in plaintiff's case was open and obvious, and, therefore, the trial court correctly held that defendant owed no duty to plaintiff.

Although a condition may be open and obvious, there may be special aspects that make the risk of harm unreasonable. *Corey, supra* at 6-7. However, because plaintiff's appellate brief does not address the trial court's ruling that there were no special aspects of the parking lot that made it unreasonably dangerous, the issue is deemed abandoned on appeal. See *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

Next, plaintiff argues that defendant failed to take reasonable measures within a reasonable time after the accumulation of ice and snow to diminish the risk of injury to plaintiff. However, plaintiff never alleged that special aspects existed that made the parking lot unreasonably dangerous. "[I]n the context of an accumulation of snow and ice, . . . when such an accumulation is 'open and obvious,' a premises possessor must 'take reasonable measures within a reasonable period of time after the accumulation of snow and ice to diminish the hazard of injury to [plaintiff]' only if there is some 'special aspect' that makes such accumulation 'unreasonably dangerous.'" *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 332; 683 NW2d 573 (2004), quoting *Lugo, supra* at 517. Therefore, defendant owed no duty to plaintiff to take any measures after it snowed.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio